

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Petition for Limited Waiver from)	
FairPoint Communications, Inc.)	

**COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION
ON FAIRPOINT PETITION FOR WAIVER**

NCTA – The Internet & Television Association (NCTA) responds to the Commission’s request for comment on FairPoint’s petition for waiver of the Connect America Fund (CAF) Phase I notification rules.¹ FairPoint asks the Commission to waive the rules requiring it to correctly identify in advance the census blocks in which it planned to provide broadband service in return for its receipt of CAF Phase I funding. Due to FairPoint’s failure to provide accurate and timely information regarding its plans to deploy CAF-supported broadband service, the Commission must ensure that this support has been used in census blocks where no unsubsidized provider offers broadband service at the requisite speeds, and take immediate action to rescind or redirect the funding if that is not the case.

In 2013, the Commission allowed a specific subset of broadband providers, price cap-regulated incumbent local exchange carriers (LECs), exclusive access to \$485 million in CAF Phase I support, which was designed “to spur rapid broadband deployment to ‘lower-cost areas

¹ FairPoint Petition for Limited Waiver, WC Docket No. 10-90 (Mar. 30, 2017) (FairPoint Petition); *Wireline Competition Bureau Seeks Comment on Petition for Limited Waiver from FairPoint Communications, Inc.*, WC Docket No. 10-90, Public Notice, DA 17-316 (Wireline Comp. Bur, Apr. 4, 2017).

where there is no private sector business case for deployment of broadband.”² Under this round of CAF Phase I, price cap LECs agreed to provide broadband at speeds of 4 Mbps downstream/1 Mbps upstream for \$775 per location to locations that did not have access to broadband at speeds of 768 kbps/200 kbps, and \$550 per location to locations that did not have access to 3 Mbps/768 kbps broadband.³ To “allow[] support to be appropriately targeted to unserved areas consistent with our overarching goals for Phase I,” the Commission required price cap LECs to identify the census blocks where they intended to use CAF Phase I support,⁴ and then conducted a challenge process in which other providers were given an opportunity to let the Commission know that they were providing broadband service in any of the identified census blocks, making them ineligible for support.⁵

In its petition FairPoint asserts that in this round of funding it accepted \$626,550 to provide broadband to 1,122 locations in Virginia.⁶ It informed the Commission that this funding would be used in only 14 census blocks, and the Commission conducted its challenge review process on only these 14 blocks.⁷ In September 2016, the fund administrator, USAC, informed

² *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7766, 7770, ¶ 9 (2013) (*CAF Phase I Round 2 Order*) (quoting *Connect America Fund*, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17720, ¶ 145 (2011) (*CAF Order*)).

³ *CAF Phase I Round 2 Order*, 28 FCC Rcd at 7771-74, ¶¶ 15-21.

⁴ 47 C.F.R. § 54.312(c)(4) (“A carrier must provide notice to the Commission, the Administrator, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept, the number of locations at the \$775 amount, and the number of locations at the \$550 amount, and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation . . . If a carrier intends to deploy to census blocks not initially identified at the time of election, it must inform the Commission, the Administrator, relevant state commissions, and any affected Tribal government of the change at least 90 days prior to commencing deployment in the new census blocks.”).

⁵ *CAF Phase I Round 2 Order*, 28 FCC Rcd at 7776-79, ¶¶ 28-32.

⁶ FairPoint Petition at 4.

⁷ *Wireline Competition Bureau Publishes Census Blocks, and Commences Challenge Process, for Second Round of Connect America Phase I*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 12781 (Wireline Comp. Bur. 2013) (list of census blocks at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-323008A1.xlsx).

FairPoint that many of the locations at which FairPoint had reported deploying broadband in its annual reports appeared to be ineligible for funding because they were located in census blocks that FairPoint had not identified in its 2013 funding acceptance.⁸ In fact, most of the locations in Virginia to which FairPoint had deployed broadband with CAF Phase I support were located in 185 census blocks that FairPoint had never identified.⁹ In response, FairPoint filed the instant petition, asking the Commission to waive the census block notification requirement for these 185 census blocks, and to now conduct a retroactive challenge process to determine whether or not the census blocks were served in 2013.

Rather than requiring broadband providers that did not receive CAF Phase I support to spend potentially significant amounts of time and resources to identify the status of their deployments in these areas from four years ago, the Commission instead should examine Form 477 data to ascertain whether these areas are eligible for the CAF Phase I support that FairPoint is seeking. In examining the Form 477 data, the Commission should not limit its review to determining whether these areas were eligible in 2013 when FairPoint first accepted CAF Phase I support, but also should consider whether any unsubsidized broadband providers currently offer service at the requisite speeds in these areas. FairPoint's failure to comply with the Commission's notification rules precluded other providers from being aware that government-subsidized broadband would be offered in these census blocks. It is possible that, if they had known of FairPoint's intention to use CAF Phase I support in these areas, providers instead would have deployed broadband in other, non-subsidized areas, meaning additional consumers would have access to broadband today. Under these circumstances, the Commission's goal for

⁸ FairPoint Petition at 4.

⁹ *Id.* at 4-5.

CAF Phase I of “provid[ing] an immediate boost to broadband deployment in areas that are unserved by any broadband provider”¹⁰ would not be met and FairPoint should not be rewarded for overbuilding existing providers. Instead, FairPoint should be required to refund any support it received to provide broadband to locations in these census blocks, or should be required to build elsewhere in eligible areas.¹¹

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris
Jennifer K. McKee
NCTA – The Internet & Television
Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

May 4, 2017

¹⁰ *CAF Order*, 26 FCC Rcd at 17717, ¶ 137.

¹¹ The Commission also should ensure that FairPoint is not receiving CAF Phase II support in any of the census blocks for which it is now seeking Phase I support. *CAF Phase I Round 2 Order*, 28 FCC Rcd at 7774, ¶ 21 (“[I]n order to use Connect America funds in the most efficient manner possible and avoid providing excess support to an area, we direct the Bureau to ensure the funding is not provided to the same census blocks under both Phase I incremental support and Phase II. No carrier should be allowed to satisfy its Phase I obligations in any census block where it receives Phase II support.”).